

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-13842
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 14, 2012
County: Wayne (82-76)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 14, 2012, by teleconference from Detroit, Michigan. Participants on behalf of claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Was the denial of claimant's application for Medical Assistance (MA-P), State Disability Assistance (SDA), and retroactive MA-P benefits for lack of disability correct?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P on May 9, 2011.
2. Claimant is 47 years old.
3. Claimant has a 12th grade education with a degree.
4. Claimant is not currently working.
5. Claimant has a prior work history consisting of telemarketing.
6. These positions were performed at the sedentary exertional levels.

7. Claimant's job responsibilities in telemarketing consisted of selling papers over the phone, required no lifting, no standing, and no sitting positions.
8. Claimant did not testify to any mental limitations with regard to work-related activities in this particular job.
9. Claimant alleges disability due to degenerative joint disease, arthritis, degenerative disc disease, and cerebral vascular accident.
10. No medical evidence of cerebral vascular accident was presented, and no limitations secondary to cerebral vascular accident were contained in the medical record.
11. Medical records show no evidence of stenosis or cervical herniation.
12. Claimant has reduced range of motion on the left side.
13. Claimant ambulates with a cane, and the cane is medically needed.
14. Claimant has an inability to tandem walk, heel/toe walk, and had difficulty getting on and off the exam table.
15. Claimant had a positive straight leg raise test in the supine position.
16. Claimant takes narcotic medications, but has no side effects from these medications.
17. Claimant testified she could stand for 5 minutes, carry 10 pounds, and could sit for at least 30 minutes before needing to change positions.
18. Claimant alleged mental symptoms resulting from an affective disorder; however, claimant's most recent medical records are from [REDACTED] and there is no medical evidence that claimant is still suffering from a mental condition.
19. On November 9, 2011, the Medical Review Team denied MA-P, stating that claimant could perform past work.
20. On November 14, 2011, claimant was sent a notice of case action.
21. On November 28, 2011, claimant filed for hearing.
22. On January 13, 2012, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant was capable of performing other work.
23. On March 14, 2012, a hearing was held before the Administrative Law Judge.

24. Additional medical evidence was submitted, SHRT again denied on April 12, 2012, stating that claimant could perform past work.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and BRM.

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905.

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five-step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in SGA. 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore,

the Administrative Law Judge finds that claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of degenerative disc disease and arthritis, which has more than a minimal effect on claimant's work-related abilities. Furthermore, with regard to claimant's psychological symptoms, claimant's most recent records are from early [REDACTED]; therefore, as there is no medical evidence of current psychological symptoms, the Administrative Law Judge cannot, in good faith, consider those symptoms. Furthermore, while claimant alleged cerebral vascular accident, no evidence was presented of such. Therefore, the undersigned cannot consider cerebral vascular accident. However, for the sake of argument, claimant passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925.

This is, generally speaking, an objective standard; either the claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 1.00 (Musculoskeletal). Claimant's condition does not meet the requirements contained in the listing. Claimant does not have evidence of nerve root compression required by the listing. The medical evidence is insufficient to consider this listing. Therefore, claimant cannot be found to be disabled at this step based upon medical evidence alone. 20 CFR 416.920(d). We must, thus, proceed to the next steps and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether he can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) The individual has the functional and vocational capacity for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA.

SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8

hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work-related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional nor nonexertional limitations; however, such symptoms can often affect the capacity to perform activities as contemplated above and, thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, the only documented impairments are degenerative disc disease and arthritis. Claimant has documented difficulty standing, lifting, and carrying.

Claimant requires the use of a cane to ambulate and must change positions when sitting. Claimant has documented pain resulting from these impairments.

However, claimant's allegations of psychiatric impairments are not sufficiently documented by the medical record. The most recent medical records were from [REDACTED], and there is no documentation that claimant's mental impairments persist. Furthermore, there is no documentation of a cerebral vascular accident, so the undersigned cannot consider that in his determination.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering functions that require lifting of moderate weights and physical exertion that could exacerbate pain. Claimant has limitations with reaching and pulling, especially when weight is involved, and minor manipulative limitations. Claimant has postural limitations (e.g. stooping, bending, and crouching), but no visual limitations or communicative (hearing, speaking) limitations. Claimant has limitations with standing, walking, or the use of her legs.

Claimant testified to only being able to stand 5 minutes and walk short distances; the Administrative Law Judge found this testimony credible in light of the medical record.

Claimant's PRW includes work as a telemarketer. This job, as typically performed and described by claimant, required talking on the phone. This job did not require heavy lifting, and there was no testimony that this job required physical exertion as such might cause claimant to experience degenerative pain. This job did not require any reaching or pulling. Claimant did not express that she had mental limitations with regards to this job.

Claimant's medical record as a whole does not show that she has a physical impairment that would prevent her from performing this past work. Even giving claimant the benefit of the doubt with regard to psychiatric records, a simple, unskilled, routine job such as this one would not be significantly impaired by the psychological symptoms claimant expressed.

The medical record shows that claimant is physically and mentally capable of performing her past relevant work. Therefore, claimant possesses the residual functional capacity to perform her prior relevant work.

Therefore, given the functional requirements for these jobs as stated by claimant (which is consistent with how these jobs are typically performed), and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does retain the capacity to perform her past relevant work.

As claimant retains the capacity to perform past relevant work, the undersigned must find that claimant does not meet the requirements to be found medically disabled. As claimant does not meet the requirements to be found medically disabled, the

undersigned holds that the Department was correct when claimant was found not disabled for the purposes of the MA-P program.

As claimant has been found not disabled at Step 4, no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for the purposes of the MA program. Therefore, the decision to deny claimant's application for MA-P was correct.

Accordingly, the Department's decision in the above-stated matter is, hereby, **AFFIRMED**.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 9, 2012

Date Mailed: July 9, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

2012-13842/RJC

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

